

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

GULF UNDERWRITERS INSURANCE	:	
COMPANY,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:03cv1277 (SRU)
v.	:	
	:	
THE HURD INSURANCE AGENCY, INC.	:	
and THOMAS W. HURD,	:	
Defendants.	:	

**RULING ON DEFENDANTS’ MOTIONS TO DISMISS**

Gulf Underwriters Insurance Company (“Gulf”), an insurer, seeks a declaratory judgment voiding or reforming the policy it issued to The Hurd Insurance Agency (“Hurd”). The two defendants – Hurd and its CEO and sole shareholder, Thomas W. Hurd (“Mr. Hurd”) – have both moved to dismiss the complaint for lack of personal jurisdiction. For the reasons set out below, Hurd’s motion is denied and Mr. Hurd’s motion is granted.

**I. Facts**

On the basis of the complaint and the affidavits filed by each party in support of their positions on this motion, the following appear to be the facts of the case.

Hurd is a Pennsylvania corporation with its principal place of business in Pennsylvania. Its CEO and sole shareholder is Thomas W. Hurd, a Pennsylvania resident. Gulf Underwriters is a Connecticut corporation with its principal place of business in New York.

In January 2002, Hurd applied for a Gulf Underwriter’s Insurance Agents and Brokers Errors and Omissions policy through Hurd’s broker, Baldinger Insurance Services (“BIS”). The application papers were processed by Gulf’s “managing general underwriter” Target Insurance Services (“TIS”) –

located in Connecticut. TIS ultimately issued Hurd policy number GU061716-B (“the policy”), covering the term of February 28, 2002 to March 14, 2003. Premiums were to be paid by Hurd to TIS, and TIS was designated as Gulf’s agent.

Target Professional Associates (“TPA”) – a division of TIS, also located in Connecticut – was used by Gulf to process all of Hurd’s claims submitted under the policy. Hurd submitted a number of claims to TPA resulting in frequent correspondence between the two entities.

Gulf now alleges, in essence, that the policy was procured by misrepresentations, and, consequently, the policy should either be voided or reformed to exclude certain claims. Alternatively, Gulf argues that various claims are not covered by the policy.

## **II. Discussion**

Both defendants have moved to dismiss the complaint, arguing that this court lacks personal jurisdiction over them. Gulf counters that this court has personal jurisdiction over Hurd because (a) it executed a contract to be performed in Connecticut and (b) committed a tortious act in Connecticut. Gulf further argues that there is jurisdiction over Mr. Hurd because he committed a tortious act in Connecticut.

### **A. Legal Standard**

Faced with a Rule 12(b)(2) motion to dismiss, a plaintiff has the burden of showing that the court has personal jurisdiction over the defendant. Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996). Where, as here, the court has not held an evidentiary hearing and discovery is not complete, the plaintiff need only make a prima facie showing of personal jurisdiction based on the pleadings and any affidavits. Bank Brussels Lambert v. Fiddler Gonzalez &

Rodriguez, 171 F.3d 779, 784 (2d Cir. 1999); Olin Corp. v. The Furukawa Electric Co., 2003 WL 2002751, \*2 (D. Conn. April 15, 2003).

Questions of personal jurisdiction over a foreign person in diversity cases are resolved through the use of a two-part analysis. First, the court looks to see if the long-arm statutes of the state where it sits confers jurisdiction. Bank Brussels, 171 F.3d at 784. Second, the court determines if exercise of such jurisdiction is consistent with federal due process requirements. Id.

In this case, there are two relevant Connecticut long-arm statutes. Jurisdiction over Hurd, a foreign corporation, is governed by Connecticut General Statutes section 33-929(f). Jurisdiction over Mr. Hurd, a nonresident, is governed by Connecticut General Statutes section 52-59b(a).

B. Jurisdiction Over The Hurd Insurance Agency

Gulf argues there are two grounds for personal jurisdiction over Hurd: (1) the cause of action arises out of a tort committed in Connecticut, and (2) the cause of action arises out of a contract made in, or to be performed in, Connecticut.

1. *Tortious Conduct*

Gulf argues that the policy it issued to Hurd was procured by means of misrepresentations made in Hurd's application for the policy. Because the application was sent to TIS in Connecticut, Gulf argues, Hurd committed a tort in Connecticut sufficient to confer jurisdiction over the current lawsuit.

Jurisdiction over a foreign corporation exists "on any cause of action arising . . . (4) out of tortious conduct in this state . . . ." Conn. Gen. Stat. § 33-929(f). Mailing or faxing a false representation into Connecticut constitutes tortious conduct for the purpose of the long-arm statute. Adams v. Guthy Renker Corp., 106 F. Supp. 2d 400, 404 (D. Conn. 2000).

Assuming that Hurd's application for a policy contained false representations, there is nevertheless no evidence that Hurd sent its application directly to Connecticut. The application itself gives no indication of where it was sent. (Complaint Ex. C.) The affidavit of Gulf's witness, Valerie McDonald, states that the application was sent to Gulf's subsidiary in Florida and was automatically rerouted to Connecticut. (McDonald Affidavit ¶ 9.) Moreover, even had the application been sent directly to Connecticut, it was sent by BIS – not Hurd – and there is no evidence about the nature of the agency relationship between Hurd and BIS.

In short, at this stage there is no evidence that any of the alleged misrepresentations were directed at Connecticut by Hurd. Consequently, section 33-929(f)(4) provides no basis for personal jurisdiction.

## 2. *Contract*

Gulf also argues that there is sufficient basis for jurisdiction in section 33-929(f)(1), which states that jurisdiction exists for any cause of action arising “[o]ut of any contract made in this state or to be performed in this state.” Gulf does not contend that the contract was made in Connecticut;<sup>1</sup> it argues that jurisdiction is premised on the fact that the contract was “to be performed in this state.” The question is a close one, and, although admittedly the evidence is sparse and a good deal of inference is needed to support Gulf's position, I find that at this stage Gulf has made out a prima facie case that Hurd made a contract that was to be performed in Connecticut.

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<sup>1</sup> And, even if it did, there is no evidence that the last step needed to bind the parties was taken in Connecticut. See Chemical Trading, Inc. v. Manufacture de Produits Chimiques de Tournan, 870 F. Supp. 21, 23 (D. Conn. 1994) (“In Connecticut, a contract is considered made when and where the last thing is done which is necessary to create an effective agreement.”) (internal citations omitted).

A contract that is “to be performed in this state,” for the purposes of the long-arm statute need not explicitly require performance in Connecticut, neither must the performance be that of the party over whom jurisdiction is sought. Teleco Oilfield Svcs., Inc. v. Skandia Insurance Co., 656 F. Supp. 753, 757 (D. Conn. 1987). If, however, jurisdiction is based solely on the plaintiff’s performance there must be a showing either that (1) the contract expressly contemplated performance in Connecticut or (2) the plaintiff performed a substantial part of its obligations in Connecticut. General Star Indemnity Co. v. Anheuser-Busch Co., 1998 WL 774234, \*4 (D. Conn. 1998).

In this case, there is evidence tending to establish that (1) the policy contemplated performance in Connecticut, (2) the defendant performed in Connecticut, and (3) the plaintiff performed a substantial part of the contract in Connecticut.

The policy itself provides that TIS will be Gulf’s agent, putting Hurd on notice that a Connecticut-based company would undertake at least some of Gulf’s performance obligations. (Complaint Ex. A.)

There is evidence that Hurd’s performance – consisting of paying premiums and providing information regarding its claims – was done in Connecticut. Hurd was instructed to remit its premiums to TIS in Connecticut (Kihlmire-Caudill Affidavit ¶ 9 and Ex. B), and there is no indication it did otherwise. Additionally, all communication regarding claims appear to have been made to TIS or its subdivision, TPA. (Kihlmire-Caudill Aff. ¶ 9 and Ex. C). Cf. Teleco, 656 at 757 (finding payment of premiums constitutes actual and substantial performance for purpose of establishing jurisdiction).

The record evidence also indicates that most, if not all, of Gulf’s performance took place in Connecticut through TIS and TPA. TPA appears to have investigated and worked to resolve all claims

made by Hurd. (Concu Aff. ¶ 9; Kihlmire-Caudill Aff. ¶ 10.) Moreover, there appears to have been a good deal of communication between TPA and Hurd concerning resolution of claims. (Kihlmire-Caudill Aff. ¶ 8 and Ex. C).

Accordingly, on the basis of this evidence, and bearing in mind the slight burden on Gulf at this stage in the proceeding, I conclude that section 33-929(f)(1) gives this court jurisdiction over Hurd.

I next must consider whether exercise of personal jurisdiction over Hurd comports with due process requirements. This analysis is not difficult. The above conclusions make clear that Hurd had sufficient contact with Connecticut to satisfy the due process requirements of International Shoe Co. v. Washington, 326 U.S. 310 (1945), and its progeny. The evidence tends to show that Hurd (a) had a policy it knew was being administered by a Connecticut company, (b) paid premiums to a Connecticut company, and (c) submitted numerous claims for insurance coverage to a Connecticut company. As a result of these activities, Hurd could reasonably anticipate being haled into court in Connecticut if any dispute arose regarding the policy. See, e.g., Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 (1985) (“we have emphasized that parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities.”) (internal citations omitted). Moreover, for the same reasons, exercise of jurisdiction over Hurd does not offend traditional notions of fair play and substantial justice. Int’l Shoe, 326 U.S. at 316.

C. Jurisdiction Over Thomas W. Hurd

Gulf argues that jurisdiction over Mr. Hurd is appropriate under section 52-59b as a person who “commits a tortious act within the state.” Conn. Gen. Stat § 52-59b(a)(2). The tortious conduct,

Gulf contends, is the submission of the application for insurance coverage containing alleged misrepresentations.

For the same reasons given above in the discussion about Hurd, there is no evidence that Mr. Hurd (or anyone else) ever sent the application directly to Connecticut. Neither is there any evidence that BIS was Mr. Hurd's agent for any purpose. Accordingly, Mr. Hurd does not fall within the ambit of the long-arm statute because no evidence shows he committed the alleged tortious activity in Connecticut.

Because Gulf has not made out a prima facie case that Mr. Hurd committed a tortious act in Connecticut, there is no need to reach either the question of the applicability of the "fiduciary shield doctrine" or any due process concerns. Mr. Hurd's motion to dismiss is granted because Connecticut has not sought to extend its jurisdiction to cover him.

### **III. Conclusion**

For the aforementioned reasons, Hurd's motion to dismiss (doc. # 7) is DENIED and Thomas W. Hurd's motion to dismiss (doc. # 21) is GRANTED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 11<sup>th</sup> day of May 2004.

/s/ Stefan R. Underhill  
Stefan R. Underhill  
United States District Judge